IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

Crl.Rev.Pet.No. 2380 of 2007()

CRA.71/2005 of SESSIONS COURT, MANJERI
CC.416/2003 of JUDL.MAGISTRATE OF FIRST CLASS COURT-I, MANJERI

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REVN. PETITIONER: REVISION PETITIONER/APPELLANT/ACCUSED

HAMSA, S/O KUTTIMUHAMMED,
NARUKARA AMSOM DESOM, ALUKKAL,
NEAR UNITTY COLLEGE, MALAPPURAM DISTRICT.

BY ADV. SRI.K.P.MUJEEB

RESPONDENTS: COMPLAINANT & STATE

STATE OF KERALA REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 09/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 2380 OF 2007 B

Dated this the 9th day of August, 2007

O R D E R

The revision petitioner, who was the accused in C.C.No.416/03 on the file of the JFCM-I, Manjeri for an offence punishable under section 379 IPC, challenges the conviction entered and the sentence passed against him concurrently by the courts below for the aforesaid offence.

2. The case of the prosecution is that on 30.12.2002 at about 11.40 a.m., the accused committed theft of Rs.300/- (Rupees three hundred only) from the shirt pocket of PW1 from inside a bus when the bus reached the place called Kacheripady in Manjeri. The accused has thereby committed an offence punishable under section 379 IPC.

3. On the side of the prosecution five witnesses were examined as PWs 1 to 5 and four documents were marked as Exts.P1 to P4 and three currency notes each of Rs.100/- denomination were marked as MO1 series.

4. The accused denied the incriminating circumstances appearing against him in the evidence for the prosecution. He did not adduce any defence evidence.

5. The learned Magistrate after trial, as per judgment dated 5.2.05 convicted the revision petitioner for the offence punishable under section 379 IPC and sentenced him to undergo simple imprisonment for six months. On appeal preferred by the revision petitioner as Crl.Appeal No.71/05 before the Sessions Court, Manjeri, the same was dismissed as per judgment dated 14.11.06. Hence, this revision.

6. The learned counsel for the revision petitioner submitted that the evidence of PW1 is full of contradictions, omissions and exaggerations and that at one stage he would state that the culprit was sitting beside him and at another stage he would say that the culprit was sitting behind him and the conviction recorded by the courts below overlooking the above discrepant evidence is unsustainable.

7. I cannot agree with the above submissions. The trial court which had the unique advantage of seeing the witnesses and assessing their credibility had no difficulty in believing the testimony of PW1. According to PW1, the culprit had inserted his hand in his shirt pocket and he suddenly raised a hue and cry whereupon the culprit was taken to the Manjeri Police Station from where MO1 series currency notes were seized from the pocket of the culprit who was none other than the revision petitioner. The conviction recorded after an evaluation of the oral and documentary evidence by two courts cannot be interfered with by this court, sitting in the rarefied revisional jurisdiction and is

accordingly confirmed.

8. What now survives for consideration is the question of adequacy or otherwise of the sentence imposed on the revision petitioner. Having regard to the fact that no previous conviction has been proved against the revision petitioner and having regard to the facts and circumstances of the case, I do not think that imprisonment for six months was warranted. In my opinion, imprisonment for four months will commensurate with the gravity of the offence. Accordingly, as against the punishment of simple imprisonment for six months imposed by the court below for his conviction under section 379 IPC, the revision petitioner shall undergo simple imprisonment for four months.

This revision is disposed of as above.

(V. RAMKUMAR, JUDGE)

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